IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 16 OF 2004
IN
WRIT PETITION NO. 1749 OF 2004

M/s. Cipla Limited & Ors. ... Petitioners

Versus

Union of India and Anr. ... Respondents

Mr. Rohit Kapadia, Senior Counsel with Mr. S.K. Cooper with Mr. P.M. Palshikkar for Petitioner.

Mr. B.A. Desai, Addl. Solicitor General with Ms. Sona Singh with Mr. A.M. Sethna and Ms. Naveena Kumari for Respondents.

CORAM: F.I. REBELLO &
MRS.V.K.TAHILRAMANI,JJ.
DATE : AUGUST 04, 2006

P.C.:

1. This is a motion on behalf of the Union of India for dismissing the petition for non compliance of the judgment and order dated 1.8.2003 passed by the Supreme court as according to the Respondent, Union of India, also the order dated 20.9.2003 of this court as the Petitioners failed to deposit the sum of Rs.39,81,15,194/- i.e. 50% of the overcharge amount as calculated by the Respondents and intimated by letter dated 23.9.2003. The learned counsel had fairly brought to our attention also the order of the Supreme Court dated 14.3.2005 in C.A. No. 329 of 2005. Inspite of that, the learned counsel submits that as the Petitioners have failed

to deposit the amount, petition should be dismissed.

2. We have heard the learned counsel for the parties. Civil Appeal Nos. 3375-3384 of 2002 were disposed of by the Supreme Court by order dated 1.8.2003. In Para 11, the Supreme Court held as under :

> " The appeals are accordingly allowed without costs. We also consider it just and proper to give liberty to the appellant and the concerned statutory authorities to recover 50% of the "overcharged" amounts pending fresh determination by the High Court. Accordingly, we direct stay of recovery of 50% of the "overcharged" amount subject to the payment of remaining 50% within the period of four weeks from the date of communication of the amount payable by each of the writ petitioners."

. It will thus be clear from the order, that if the Petitioners did not pay 50% of the amount, the remaining amount as set out in Para 11 of the judgment, would also become recoverable, as there would be no stay against recovery. In other words, it will be open to the Respondent to recover the entire amount.

3. It appears that proceedings were also pending before the Allahabad High Court, in respect of the same amounts, which can be described as overcharged amounts, against the judgment of the Allahabad High Court, the Union of India has preferred an appeal which has been numbered as Civil Appeal No. 329 of 2005. An order came to be passed on 14.3.2005 by the Supreme Court which reads as under :

> "Having heard the learned counsel for the parties, while confirming the interim order passed by this Court on 10th September, 2004, we further direct that till the decision of the appeal, the appellants would not take coercive steps for recovery from the respondents and launching criminal prosecution against the respondents. It is agreed that in case the appellants succeeded and in accordance with law, if the respondents are to be prosecuted, the plea of limitation would not be raised for the period the matter remained pending in this court."

4. On behalf of the Petitioners herein, their learned counsel has drawn our attention to the

rejoinder affidavit filed on behalf of the Union of India in Special Leave Petition (L) No. 17712 of 2004 which thereafter was numbered as Civil Appeal No. 329 of 2005. In Paragraph 7 of the said affidavit, the affiant had brought to the attention of the Supreme Court that the Respondents before the Supreme Court who are Petitioners herein, had not deposited 50% of the overcharge amount and had not complied with the directions of the Supreme Court. Thereafter, in the concluding paragraphs, Union of India has prayed as under :

> "In view of the facts stated and submitted hereinabove, it is most respectfully prayed that the stay granted in the matter may please be continued in the larger public interest and the respondents herein please be directed to deposit the "overcharge" amount".

5. It is after hearing the Union of India and the private respondents, who are Petitioners herein, that the Hon'ble Supreme Court was pleased to pass an interim order dated 14.7.2005. In other words, the Supreme Court had considered the issue of non-deposit by the Petitioners before us and after considering the same, directed that no coercive steps for the recovery be taken or criminal

prosecution be launched.

6. It may be pointed out that on behalf of the Union of India, the learned Addl. Solicitor General points out to us that the subject matter before this court and the appeal pending before the Supreme Court is distinct. We really are not concerned with the same. There are two issues before us. Firstly, considering the judgment of the Supreme Court, if the Petitioner have not deposited 50% of the amount, there would be no stay of recovery and the entire amount is payable and due. If that be the case, it is open to the Union of India to take steps for recovery of the amount due and payable. This court in the pending petition cannot assist the Petitioners direct recovery, as these are not proceedings in execution for recovery nor can we dismiss the Petition on the ground that the amount was not deposited, considering section 141 of the Code of Civil Procedures, as the procedure laid down in the C.P.C. will not apply to the proceedings under article 226 of the Constitution of India.

7. Secondly, in so far as Civil Appeal No. 329 of 2005 is concerned, an interim order has been passed by the Supreme Court restraining the Union of India, from taking coercive steps for recovery. In the affidavit in rejoinder in the pending appeal before

the Supreme Court, from which same have quoted earlier, the Union of India has brought to the attention of the Supreme Court the failure by the Petitioners herein to deposit the amounts.

8. We are clearly therefore, of the opinion that considering these facts and the orders of the Supreme Court,it is not possible for this court to dismiss the petition on the ground that the Petitioner have not complied with the order of the Supreme court in Civil Appeal NO. 3375-3384 of 2002.

9. We may also point out that the Petitioners herein had moved this court for early hearing of the matter.

10. Considering the directions of the Apex Court, we have directed that the matter be added to the weekly board for final hearing.

11. With the above observations, motion stands disposed of.

(MRS.V.K.TAHILRAMANI,J.) **(F.I.REBELLO, J.)**